

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

UNITED STATES <i>ex rel.</i> LIUBOV SKIBO, et)	
al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. 5:13-cv-110
)	
GREER LABORATORIES, INC., et al.,)	Request for Oral Argument
)	
Defendants.)	
)	
)	
)	
)	

**DEFENDANT GREER LABORATORIES, INC.'S
MOTION TO DISMISS PURSUANT TO RULES 8, 9(B), AND 12(B)(6)**

Defendant Greer Laboratories, Inc. (“Greer”) respectfully moves, pursuant to Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6), to dismiss with prejudice the entirety of the Relators’ Amended Complaint in the above-captioned matter. As grounds for this motion, set forth in greater detail in the accompanying memorandum of law, Greer states as follows:

1. Relators filed this action under seal on August 2, 2013 and subsequently filed an Amended Complaint on May 9, 2014. (Dkt. Nos. 1 & 10).
2. Relators allege that Greer, their former employer, violated the federal False Claims Act (“FCA”) and its various state counterparts by submitting or causing the submission of “false” claims for payment for its custom mix and SLIT products. (Amended Compl. ¶¶ 53-

81, Dkt. No. 10). Relators further allege that Greer retaliated against them for raising internal concerns regarding supposed regulatory issues. (*Id.* at ¶¶ 82-91).

3. Relators' FCA claims fail at the threshold because they do not specifically allege that Greer submitted or caused the submission of any claims for payment by the government for its custom mix and SLIT products as required under the FCA and Fed. R. Civ. P. 9(b).

4. Independently, even if Relators had sufficiently pleaded that Greer submitted such claims for payment their claims involving custom mixes fail because Relators do not plead facts sufficient to plausibly allege that Greer knowingly submitted false claims in light of the regulatory scheme relating to custom mixes and the United States Food and Drug Administration's acknowledgment and tacit acceptance of the industrywide practice of manufacturing them.

5. Relators' retaliation claims fail because Relators do not allege that they were engaged in "protected activity" having any connection to fraudulent conduct and a request for payment, let alone that such activity prompted their termination.

WHEREFORE, for the reasons set forth in detail in its Memorandum of Law in Support of its Motion to Dismiss, Greer respectfully requests that this Court grant its Motion to Dismiss this action with prejudice.

REQUEST FOR ORAL ARGUMENT

Greer respectfully requests that the Court hear oral argument on its Motion to Dismiss.

Respectfully Submitted,

GREER LABORATORIES, INC.,

By its attorneys,

s/ James C. Lesnett, Jr.

James C. Lesnett, Jr. (N.C. Bar No. 36232)
PARKER POE ADAMS & BERNSTEIN LLP
401 S. Tyron St., Suite 3000
Charlotte, NC 28202
Tel: (704) 372-9000
Fax: (704) 334-4706
jamielesnett@parkerpoe.com

(Admitted *pro hac vice*)

s/ Michael T. Gass (with permission)

Michael Gass (BBO#: 546874)
mgass@choate.com
Melissa Bayer Tearney (BBO#: 558612)
mtearney@choate.com
Kristen L. Dooley (BBO#: 692675)
kdooley@choate.com
CHOATE, HALL & STEWART LLP
Two International Place
Boston, MA 02110
Tel.: (617) 248-5000
Fax: (617) 248-4000

Date: September 16, 2016

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered CM/ECF participants as identified on the Notice of Electronic Filing (NEF) and a paper copy will be sent by certified mail, return receipt requested, to those indicated as non-registered participants as follows:

Charles H. Rabon, Jr.
Marshall P. Walker
RABON LAW FIRM, PLLC
225 East Worthington Avenue, Suite 100
Charlotte, North Carolina 28203
On behalf of Relators Liubov Skibo and Edward Patt

Michael M. Berger
Asst. Attorney General
North Carolina Department of Justice
Medicaid Investigation Division
5505 Creedmoor Road, Suite 300
Raleigh, North Carolina 27612
On behalf of the State of North Carolina and as coordinating counsel for the State of California, State of Colorado, State of Connecticut, State of Delaware, State of Florida, State of Georgia, State of Illinois, State of Indiana, State of Iowa, State of Louisiana, State of Maryland, State of Massachusetts, State of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oklahoma, State of Rhode Island, State of Tennessee, State of Texas, State of Virginia, State of Washington, State of Wisconsin and The District of Columbia

Jonathan H. Ferry
Asst. United States Attorney
U.S. Attorney's Office WDNC
227 West Trade Street, Suite 1650
Charlotte, North Carolina 28202
On behalf of the United States of America

This the 16th day of September, 2016.

s/ James C. Lesnett, Jr.
James C. Lesnett, Jr. (N.C. Bar No. 36232)
PARKER POE ADAMS & BERNSTEIN LLP
401 S. Tyron St., Suite 3000
Charlotte, NC 28202
Tel: (704) 372-9000
Fax: (704) 334-4706
jamielesnett@parkerpoe.com